

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JOHN H. BENGE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civ. A. No. 05-550-GMS
	)	
MICHAEL DELOY, Warden, and	)	
JOSEPH J. BIDEN, III, Attorney General	)	
of the State of Delaware,	)	
	)	
Respondents.	)	

**ORDER**

WHEREAS, in a Memorandum Opinion and Order dated June 22, 2007, the court determined that the Delaware Supreme Court enforced Benge's procedural default of claims one and two of his § 2254 petition by explicitly reviewing the two claims for plain error under Delaware Supreme Court Rule 8. (D.I. 40.) ; and

WHEREAS, the court denied claims one and two as procedurally barred because Benge did not demonstrate cause for, or prejudice resulting from, his procedural default of those claims. *Id.*; and

WHEREAS, the court declined to issue a certificate of appealability with respect to its denial of claims one and two. *Id.*; and

WHEREAS, Benge filed a Rule 59(e) "Motion to Alter or Amend Judgment [Denying Petitioner's § 2254 Petition] and Findings of Fact" asking the court to reconsider its refusal to issue a certificate of appealability as to its denial of claims one and two given the Third Circuit's intended consideration as to whether Delaware Supreme Court Rule 8 constitutes an

independent and adequate state procedural ground for procedural default purposes. (D.I. 42.);  
and

WHEREAS, in a Memorandum Opinion dated November 14, 2007, the court held in abeyance its decision regarding Benge's Rule 59(e) motion with respect to claims one and two pending the Third Circuit's decision in *Campbell v. Burris*, No. 05-5156 (3d Cir.). (D.I. 49.);  
and

WHEREAS, on February 14, 2007, the Third Circuit decided *Campbell v. Burris*, - F.3d -, 2008 WL 383238 (3d Cir. 2008) and held that Delaware Supreme Court Rule 8 provides an independent and adequate state ground which forecloses federal habeas review absent a showing of cause and prejudice.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

*Pro se* petitioner John H. Benge's Rule 59(e) "Motion to Alter or Amend Judgment [Denying Petitioner's § 2254 Petition] and Findings of Fact," which asks the court to reconsider its refusal to issue a certificate of appealability as to its denial of claims one and two, is **DENIED**. (D.I. 42.)

April 15, 2008  
DATE

  
\_\_\_\_\_  
CHIEF UNITED STATES DISTRICT JUDGE

